STATE OF MICHIGAN

COURT OF APPEALS

ROBIN ANN LECHNER, Plaintiff-Appellee,	UNPUBLISHED May 19, 2015
v	No. 323892 Chippewa Circuit Court
JOHN LECHNER, Defendant-Appellant.	LC No. 06-008756-DO

Before: GLEICHER, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

This divorce action has a storied history dating back to 2006. The question now before us is whether the defendant-husband was entitled to relief from the circuit court's 2013 judgment dividing the marital estate. Because the defendant-husband failed to establish a ground for relief under MCR 2.612(C)(1), we affirm the circuit court's denial of his motion.

I. BACKGROUND

On February 26, 2006, plaintiff-wife, Robin Lechner, filed a divorce complaint against her husband of 13 years, defendant John Lechner.[1] Mr. Lechner never responded to the complaint and Mrs. Lechner pursued a default judgment of divorce. Mr. Lechner again failed to respond, alleging that he never received notice of the court's hearing on this matter. On March 12, 2007, the court entered Mrs. Lechner's proposed judgment, awarding each party any separate life insurance and retirement benefits in which they may have interests. The judgment enumerated several specific items of property awarded to Mrs. Lechner,[2] but expressly granted Mr. Lechner only "the personal property currently in his possession." The default judgment also

[1] Mrs. Lechner had previously filed for divorce in 2004, but the action was dismissed for lack of progress.

[2] Of relevance in this matter and in the companion appeal of *Lechner v Lechner* (Docket No. 321250), the default judgment awarded Mrs. Lechner the marital home on Riverside Drive in Sault Ste. Marie.

required Mr. Lechner to release the proceeds of a purported $200,000 settlement agreement to her.[3]

Almost one year later, on February 20, 2008, Mr. Lechner filed a motion for relief from judgment. He claimed that he had only recently learned that he was divorced. Mr. Lechner complained that the default judgment was inequitable on its face and failed to distribute all marital property. The parties owned interests in at least three businesses and yet the judgment provided no details in that regard. On August 26, 2008, the circuit court granted Mr. Lechner's motion and set aside the default divorce judgment's property division. The court allowed the parties 30 days to schedule a new evidentiary hearing.

The parties rescheduled the hearing twice, but Mr. Lechner took no action to pursue a complete valuation and distribution of the property after November 2008. Accordingly, on November 19, 2009, the circuit court reinstated the March 12, 2007 divorce judgment. Mr. Lechner filed a motion for reconsideration, contending that he and Mrs. Lechner had been working together to value their property before seeking a final judgment, but had not yet completed their negotiations. Mrs. Lechner challenged this characterization of the proceedings, arguing that Mr. Lechner's refusal to cooperate in discovery caused the dismissal of her 2004 divorce action and unnecessarily elongated the current proceedings. The circuit court did not resolve the issue until July 2010, ultimately denying Mr. Lechner's motion and leaving the divorce judgment intact.

Mr. Lechner did not give up. On August 9, 2010, he filed a motion to force Mrs. Lechner to comply with the court's August 26, 2008 order vacating the property division in the default judgment. He claimed that Mrs. Lechner had delayed the proceedings after the subject order, resulting in the court reinstating the default judgment for lack of progress. Mrs. Lechner responded that Mr. Lechner's only remaining remedy was to file an appeal. The circuit court entertained the motion on August 16, 2010. The matter had by then been assigned to a different judge. The replacement judge chastised Mr. Lechner for sitting on his rights, noting "[w]e can't leave a judgment of divorce just open. . . . What, are we supposed to keep it open for another 20 years . . . ?" The judge conceded that the default judgment was inequitable but emphasized that Mr. Lechner had wasted his opportunity after being granted a second chance.

Mr. Lechner thereafter filed a claim of appeal, which was dismissed for lack of jurisdiction. *Lechner v Lechner*, unpublished order of the Court of Appeals, entered November 23, 2010 (Docket No. 300042). In lieu of granting Mr. Lechner's subsequent delayed application for leave to appeal, this Court vacated the circuit court's denial of Mr. Lechner's latest motion for relief and "remanded to the trial court for further proceedings consistent with the court's August 26, 2008 order and an equitable distribution of all of the marital property." *Lechner v Lechner*, unpublished order of the Court of Appeals, entered June 8, 2011 (Docket No. 301380).

[3] During later proceedings, the parties valued the settlement agreement proceeds at $250,000 or $270,000.

II. CURRENT PROCEEDINGS

Even after this Court's remand, the parties did not proceed according to plan. A trial to consider the equitable distribution of the property was originally scheduled for September 6, 2011, but did not take place until September 2013. In the meantime, Mr. Lechner attempted, within the divorce action, to void Mrs. Lechner's sale of the marital home. The court indicated that it could not return property to Mr. Lechner that had been sold to a third party, but promised to award Mr. Lechner his share of the proceeds in the divorce judgment.[4] Consistent with his tenacious behavior in the face of loss, Mr. Lechner sought to hold Mrs. Lechner in contempt of court for selling the marital home. The court denied that motion as well.

Mrs. Lechner, in turn, filed a motion to compel Mr. Lechner's participation in court-ordered discovery. Mr.s. Lechner contended that since she first filed for divorce in 2004, Mr. Lechner had refused to produce any documentation to assist in valuing the parties' property and in assessing their financial means and needs. The court warned Mr. Lechner that he could not simply respond to interrogatories by claiming that Mrs. Lechner already knew the parties' assets and possessed all necessary records: "You're going to get yourself in the same mess you're in now." The court instructed Mr. Lechner to list all of the assets, properties and debts of which he was aware and then indicate which documentation was likely in Mrs. Lechner's possession.

As noted, discovery dragged on for two years before trial was finally conducted on September 20, 2013. Mr. Lechner had hired counsel at some point, but the attorney indicated that his client was less than cooperative in preparing for trial. In fact, Mr. Lechner attempted to fire his attorney on the morning of the trial, but the court refused. At that time, Mr. Lechner was "in a mental institution" and had to participate in the proceedings by telephone. Mr. Lechner also faced criminal charges in both state and federal court.[5] He wanted to delay yet again, a request the court denied. Before trial, Mrs. Lechner provided a list of assets with estimated values along with some supporting documentation. Mrs. Lechner had not, however, had any of the property appraised. Mr. Lechner provided absolutely no evidence or lists of assets prior to trial.

At trial, Mrs. Lechner testified that she had "aggressively" sought discovery from Mr. Lechner regarding the identification and valuation of their marital property, but that he never responded. For example, in relation to Mr. Lechner's construction company, annual financial statements had to be prepared so the company could bid on projects. The latest statement available to Mrs. Lechner was for 2003, and Mr. Lechner withheld discovery of more recent statements.

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[4] Mr. Lechner filed a separate lawsuit against Mrs. Lechner and her attorney for the alienation of this property, which is the subject of the companion appeal in Docket No. 321250.

[5] Mr. Lechner was convicted in federal court for possession of two tons of explosives. During the divorce proceedings, he claimed he used the explosives in his quarry business.

Mrs. Lechner proceeded to testify in detail regarding the parties' real estate, cars, airplanes, and equipment. Mrs. Lechner described the couple's various businesses as well, including a motel, restaurant, quarries, construction company, trucking company, and farms. Of import, Mrs. Lechner presented a $172,000 mortgage given by Mr. Lechner's son, Mark Lechner, to Mr. Lechner and Mrs. Lechner after they loaned him money to build his home. Mrs. Lechner further testified that Mr. Lechner had threatened her during the course of the proceedings. Mrs. Lechner had sold the marital home on Riverside Drive in Sault Ste. Marie. She asserted that Mr. Lechner brought an excavator to the property and threatened to demolish the house, which was then owned by a third party. When the police arrived, Mr. Lechner "rammed a cop car and had [a] confrontation with one of the police officers."

Despite that Mr. Lechner had presented no witness list, the court allowed him to call his son Mark to the stand. Mark testified that he and his father are business partners. Mark gave detailed testimony regarding the value of various marital assets used in their ventures. In relation to farm and trucking equipment, Mark claimed that it was all old, rundown, and worth very little. Some of the equipment had been sold or scrapped over the years. Mark claimed that he owned the airplanes mentioned in Mrs. Lechner's testimony so they were not marital property. However, Mark presented no titles in his name. Mark challenged Mrs. Lechner's description of his mortgage loan. Mark claimed he borrowed only $52,000 of a total $172,000 debt from Mr. Lechner and Mrs. Lechner. Mark admitted that he still owed the entire $52,000, however.

Mr. Lechner then testified by telephone. Just like Mark, Mr. Lechner testified that all the various equipment and vehicles owned by the parties were of minimal value or were no longer in the parties' possession. Other equipment was difficult to value, Mr. Lechner claimed, because it was made from the scrap parts of other machines and equipment. Mr. Lechner claimed that the airplanes referenced by Mrs. Lechner were bought for Mark and that Mrs. Lechner possessed the titles. Mr. Lechner rejected Mrs. Lechner's description of the amount and location of real estate owned by the couple. In relation to the Mark Lechner mortgage, Mr. Lechner denied loaning any funds to Mark for the construction of his home. Rather, Mr. Lechner asserted that he invested equipment and labor and placed it "on the books" so Mark could count it in the valuation of his property. Mr. Lechner accused Mrs. Lechner of keeping a secret account at a Flint bank holding between $80,000 and $85,000. He also accused Mrs. Lechner of funneling the proceeds from a $270,000 lawsuit settlement into her personal accounts. Mrs. Lechner retook the stand and explained that the lawsuit settlement proceeds were used to purchase equipment for the parties' businesses, pay off mortgage loans on marital properties, and cover other marital debts.

On October 4, 2013, the court issued its ruling from the bench. The court awarded Mrs. Lechner $2,000 in attorney fees based on Mr. Lechner's noncompliance with discovery orders. The court awarded Mr. Lechner all equipment involved with his farming, construction, and quarry businesses, the airplanes, and any personal vehicles in his possession. Overall, the court credited Mr. Lechner with $265,650 in vehicles and equipment. The court awarded Mrs. Lechner three vehicles with a total value of $17,000, a tractor worth $5,000, and a bulldozer worth $10,000. In relation to Mr. Lechner's claim that Mrs. Lechner had funneled between $80,000 and $85,000 into a secret personal account in a Flint bank, the court found that Mr. Lechner "was not candid" and accepted Mrs. Lechner's explanation for the distribution of the $270,000 lawsuit settlement proceeds. As to the loan given to Mark by the couple, the court was

"left with no other conclusion than the obligation is still in place," although the court did not "know exactly what the amount is." The court therefore credited Mr. Lechner's side of the ledger with a collectible debt of $150,000.

The court lamented that neither party presented appraisals for their various real estate holdings. The court awarded Mrs. Lechner the motel/restaurant property with a value of $84,000. The court awarded a 67-acre parcel abutting the "Mystery Spot" tourist attraction to Mr. Lechner, and valued his interest at $60,000. The court detailed various other properties granted to one party or the other. Overall, the assets on Mrs. Lechner's side of the ledger amounted to $210,400 and $573,150 on Mr. Lechner's.

Despite his apparent windfall, Mr. Lechner was not satisfied and sought relief from judgment. He accused Mrs. Lechner of manipulating local authorities into charging him with a state felony, rendering him ineligible to possess explosives. Then Mrs. Lechner allegedly reported to federal authorities that Mr. Lechner possessed explosives, which he maintained that he possessed only for his quarry business. Mr. Lechner also cited "newly discovered evidence" supporting that Mrs. Lechner had converted funds and hidden them in a secret bank account. He challenged the court's valuation of his interest in the mortgage loan to Mark and the 67-acre Mystery Spot property he co-owned with his son and brother. Mr. Lechner complained that Mrs. Lechner sold the Riverside Drive property for well below market value in a transaction to her best friend. Moreover, Mr. Lechner contended that he could not be deemed uncooperative with discovery requests because Mrs. Lechner maintained all the parties' records and ledgers.

The court denied this motion for relief, noting that all issues were raised at trial and Mr. Lechner had every opportunity to present evidence. Never daunted, Mr. Lechner filed a motion for reconsideration, arguing that he was forced to proceed through the trial via telephone while he was handcuffed and with no records before him. The court again rejected Mr. Lechner's challenges. This appeal followed.

III. RELIEF FROM JUDGMENT

Defendant contends that the circuit court erred in denying his request for relief from judgment following the 2013 trial. MCR 2.612(C)(1) governs such motions as follows:

> On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
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> (a) Mistake, inadvertence, surprise, or excusable neglect.
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> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

We review for an abuse of discretion a trial court's decision on a motion for relief from judgment and on a motion for reconsideration. See *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009); *South Macomb Disposal Auth v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000).

Preliminarily, Mr. Lechner reiterates that he was incarcerated at the time of the trial and lacked access to his records during the proceedings. He further emphasizes that Mrs. Lechner possessed all pertinent records. However, Mr. Lechner was represented by counsel from September 15, 2011, up to and through the trial two years later. Mr. Lechner never requested discovery from Mrs. Lechner. And his counsel was present at trial, armed with any records made available to him by his client and through Mrs. Lechner's evidence. Therefore, we find no basis for a valid claim of surprise or excusable neglect.

Moreover, Mr. Lechner never cooperated with discovery orders. He ignored a court order to file a pretrial statement identifying the "big ticket" items in the marital estate. He did not comply with a court order to file a joint pretrial statement "including but not limited to each parties [sic] asset and debt allocation." He provided no discovery and ignored the court's order to present witness lists. The record more than thoroughly established that Mr. Lechner has tried to ignore that his wife sought a divorce and her share of the marital estate. Given his long history of strategically avoiding attention to this case when it suited him, we find utterly disingenuous Mr. Lechner's claim that he only learned of relevant information after the 2013 trial or that he acted with any diligence.

In his motion for relief from the 2013 property division, Mr. Lechner raised several points of error. He repeats those claims on appeal.

A. FLINT BANK ACCOUNT

One point of controversy in the divorce proceedings was whether Mrs. Lechner maintained an account in a Flint bank, holding between $80,000 and $85,000. Mr. Lechner claims that Mrs. Lechner denied the existence of the account during the 2013 trial. Mrs. Lechner actually testified that she could not recall whether the account existed six years earlier, or how much money was in the account in 2007. However, at an August 2008 proceeding, Mrs. Lechner acknowledged that she had a balance of $85,000 in a Flint bank account. The circuit court found that Mrs. Lechner had not committed fraud or made any misrepresentations and we agree.

At the 2013 trial, the parties expressed some confusion between the alleged account in a Flint bank and a Republic Bank account. Five years had elapsed between Mrs. Lechner's 2008 and 2013 testimony, explaining her confusion. Mrs. Lechner testified that she had transferred money between various accounts over the years to pay bills, further explaining her inability to recall the balance in a particular account several years later. Mr. Lechner presented no evidence to establish that Mrs. Lechner fraudulently concealed any account. And Mr. Lechner could have

presented his claim at trial had he employed due diligence. Mrs. Lechner did not identify the disputed account in her pretrial statement. Nevertheless, Mr. Lechner then could have discerned the omission and should have directed his attorney to review the August 2008 hearing transcript. Accordingly, no challenge connected to this purported account formed a sound basis for relief from judgment.

B. CHIPPEWA COUNTY CENTRAL SAVINGS BANK ACCOUNT

Mr. Lechner also challenges the court's characterization as a marital asset $81,190 held in a bank account owned by Mr. Lechner's son and brother. The parties seem to agree that these funds were the proceeds of a project undertaken by Lechner Construction. Mr. Lechner complains that his construction company was not paid for its work until after the divorce, removing these funds from the marital estate. For the first time with his motion for relief from judgment, Mr. Lechner presented an affidavit from Marc B. Sundstrom, who represented that he was the supervisor for Moyle Construction, attesting that Moyle did not enter its contract with Lechner Construction until August 2007, six months after the parties were divorced. Sundstrom implied that Moyle was the general contractor on the project, but Moyle's actual status is not clear. Moreover, Mr. Lechner presented no bank statements to support when the funds were deposited. Without more information, which could have been available had Mr. Lechner acted sooner, we cannot find the trial court erred in determining that this was a marital asset.

C. MARK LECHNER MORTGAGE

Mr. Lechner claims that Mrs. Lechner knowingly misrepresented that she and Mr. Lechner held a mortgage for $172,000 over Mark's home, and that the mortgage documents presented by Mrs. Lechner were false. At trial, the court considered Mark's testimony that he only borrowed $52,000 from his father and that the remainder of the mortgage represented a bank loan. This testimony was inconsistent with Mr. Lechner's testimony that no actual funds exchanged hands and that his businesses invested $50,000 of labor and equipment into the construction of Mark's home. Mr. Lechner and Mark also provided inconsistent tales regarding the repayment plan. Mark conceded that he was required to repay these funds, but that the parties agreed that repayment would be delayed until he satisfied his bank loan. Mr. Lechner testified that Mark was not required to repay the loan.

Ultimately, the trial court concluded that the mortgage document presented by Mrs. Lechner was genuine and was granted in favor of Mr. Lechner and Mrs. Lechner. Given that Mrs. Lechner had included her copy of the mortgage with her pretrial exhibits, Mr. Lechner was on notice that he needed to challenge this evidence. Yet, neither Mr. Lechner nor Mark provided any documentation before or during trial, waiting until the postjudgment motion to finally present evidence in this regard. These documents included Mark's separate bank mortgage and an itemization of his bank loan payments. Mr. Lechner failed to show that the documents could not have been presented earlier. Although Mr. Lechner was incarcerated, he was represented by counsel and Mark could have gathered this evidence at his father's request. Thus, Mr. Lechner has not shown that the new evidence could not have been provided at the trial with due diligence, cannot assert that he was surprised by Mrs. Lechner's valuation of the mortgage, and even accepting that Mark had a separate mortgage from a bank, has not established that Mrs. Lechner misrepresented anything with respect to the $172,000 mortgage.

D. MYSTERY SPOT PROPERTY

Mr. Lechner claims that the trial court erroneously valued his interest in a 67-acre parcel abutting the "Mystery Spot" in St. Ignace. The court found that Mr. Lechner and his brother purchased the property for $93,800. Mr. Lechner does not dispute that point. Mr. Lechner even admits that he provided 2/3 of the funds toward the purchase price. He claims, however, that he only owns a 1/3 interest in the property and that he purchased the other 1/3 for his son. There is no record evidence that Mark ever repaid his father for this property interest or that Mrs. Lechner agreed to the use of marital funds to buy Mr. Lechner's grown son this property. Accordingly, we discern no error warranting a relief from judgment in the trial court's valuation of Mr. Lechner's interest at $60,000, which is approximately 2/3 of the purchase price.

E. THE $270,000 SETTLEMENT

Mr. Lechner argues that Mrs. Lechner misrepresented that she used proceeds from a settlement for marital expenses. The trial court accepted Mrs. Lechner's testimony and found that the money was not available for distribution. Mr. Lechner claims that at an August 2008 hearing, Mrs. Lechner represented that some of the money was in a personal account, but that she had used the money to buy a new residence and pay off encumbrances on other marital real estate awarded to her in the 2007 default judgment. Specifically, Mrs. Lechner testified that she used the settlement to pay off an unspecified amount of mortgages on farm property and on the 67-acre St. Ignace property ultimately awarded to Mr. Lechner, to pay $8,000 on a mortgage for property awarded to her, and to pay $42,000 for a semi-truck and $26,000 for a bulldozer that were part of Mr. Lechner's business. Thus, except for the revelation that Mrs. Lechner used $8,000 to pay off a mortgage on real estate awarded to her, Mrs. Lechner's testimony at the earlier hearing was consistent with her 2013 trial testimony. There was some confusion at trial regarding whether the settlement was $250,000 or $270,000. The ambiguity of $20,000 is insignificant when we consider the value of the properties awarded to the parties. The court did not abuse its discretion in rejecting Mr. Lechner's bid for relief contesting such a relatively paltry amount.

F. PROCEEDS FROM THE SALE OF THE RIVERSIDE DRIVE HOME

Mr. Lechner contends that after this Court remanded for a trial on the issue of property distribution, Mrs. Lechner sold the marital home on Riverside Drive to her best friend for less than the true cash value. He maintains that Mrs. Lechner should have been required to provide an appraisal of this property at trial. However, Mr. Lechner was equally capable of securing his own appraisal to prove his claim, which could have been handled through his attorney after his incarceration. Moreover, while Mrs. Lechner did not list this property in her pretrial statement, Mr. Lechner was not taken by surprise. He had previously filed a motion to set the sale aside and then filed a separate lawsuit which is the subject of the companion appeal. And Mr. Lechner still has not secured an appraisal to support his challenge to the purchase price. Accordingly, the

trial court did not abuse its discretion in concluding that there was no evidence of fraud in this regard.[6]

G. BRUCE TOWNSHIP PROPERTY

In support of his claim that Mrs. Lechner committed fraud when selling the Riverside Drive property, Mr. Lechner claims that Mrs. Lechner sold another piece of real estate that was his separate, premarital property, and then concealed the proceeds from the court. Mr. Lechner presented a warranty deed from Mrs. Lechner to third-party grantees, selling property in Bruce Township for $15,000. However, Mr. Lechner presented no evidence that he purchased the property in his own name before the marriage. And Mrs. Lechner did not list this property as an asset on her pretrial statement, which should have placed Mr. Lechner on notice of its sale. Mr. Lechner also presented no evidence that the $15,000 proceeds were used for purposes beyond maintaining other marital assets or paying marital bills.

IV. CONCLUSION

In sum, Mr. Lechner has not established fraud on Mrs. Lechner's part, nor that he exercised due diligence in securing evidence before trial or should have been excused from that duty. In relation to each challenged error, Mr. Lechner has failed to establish that the circuit court abused its discretion. And he cannot support that the property division, which weighed heavily in his favor, was inequitable.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto

[6] At the October 4, 2013 hearing at which the court made its property division ruling, the court credited $30,000 as an asset to Mrs. Lechner in connection with this sale. The court accepted Mrs. Lechner's testimony that she used the remaining $16,000 to pay off debts on the property. The court omitted reference to this asset in its final written judgment. However, we have included this value in our calculation of the property awarded to the parties.